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*Attorneys for Plaintiffs*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

WILD HORSE EDUCATION, a non-profit  
corporation,

*Plaintiffs,*

v.

UNITED STATES DEPARTMENT OF  
INTERIOR, BUREAU OF LAND  
MANAGEMENT,

*Defendant.*

CASE NO.

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

Freedom of Information Act, 5 U.S.C.  
section 552 *et seq.*

## INTRODUCTION

1  
2 1. This action, through which Plaintiff WILD HORSE EDUCATION seeks access  
3 to government records held by Defendant UNITED STATES DEPARTMENT OF INTERIOR,  
4 BUREAU OF LAND MANAGEMENT (“BLM”), is premised upon, and consequent to,  
5 violations of the federal Freedom of Information Act (“FOIA”), 5 U.S.C. section 552 *et seq.*, and  
6 UNITED STATES DEPARTMENT OF INTERIOR FOIA regulations promulgated thereunder,  
7 43 C.F.R. Subtitle A, Part 2.

8 2. Defendant is unlawfully withholding records from public disclosure sought by  
9 Plaintiff -- records to which Plaintiff is entitled and for which no valid disclosure exemption  
10 applies or has been asserted.

11 3. Plaintiff seeks declaratory relief establishing that BLM has violated the FOIA and  
12 that such actions entitle Plaintiff to relief thereunder. Plaintiff also seeks injunctive relief  
13 directing BLM to conduct a reasonably adequate search for records and to promptly provide  
14 responsive material unless an exemption is properly claimed and properly applies. Finally,  
15 Plaintiff requests that the Court award Plaintiff its reasonable attorneys’ fees and costs incurred  
16 in bringing this action.

## JURISDICTION AND VENUE

17 4. This Court has jurisdiction pursuant to 5 U.S.C. section 552(a)(4)(B). That  
18 provision of the FOIA grants jurisdiction to “the district court of the United States in the district  
19 in which the complainant resides, or has his principal place of business[.]” WILD HORSE  
20 EDUCATION’s principal place of business is 216 Lemmon Drive, #316, Reno, NV 89506.

21 5. The Court also has federal question jurisdiction pursuant to 28 U.S.C. section  
22 1331.

23 6. Venue is proper in this Court under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. section  
24 1391(e)(1).

25 7. Declaratory relief is appropriate pursuant to 28 U.S.C. section 2201.

26 8. Injunctive relief is appropriate under 28 U.S.C. section 2202 and 5 U.S.C. section

1 552(a)(4)(B).

2 **PARTIES**

3 9. Defendant BLM is an agency of the United States executive branch charged by  
4 federal statute with managing, administering, and protecting the wild horses and burros in the  
5 United States.

6 10. Plaintiff WILD HORSE EDUCATION is a national non-profit corporation  
7 dedicated to research, journalism, and public education concerning the activities and operations  
8 of federal and state management of free roaming horse and wild burro populations. WILD  
9 HORSE EDUCATION has more than 150,000 members and educates and informs the public  
10 about wild horses and burros through articles, photographs, videos, and sharing data and other  
11 information.

12 **LEGAL FRAMEWORK**

13 11. The FOIA establishes the public's right of access to all federal agency records  
14 upon request unless the agency can demonstrate that one of nine narrowly enumerated disclosure  
15 exemptions applies. *See* 5 U.S.C. § 552(a), (b)(1)-(9).

16 12. The scope of federal agency records considered to be public and subject to release  
17 under the FOIA is broad. *See* 5 U.S.C. § 552(a)(2).

18 13. The FOIA imposes strict deadlines on agencies to respond to requests. *See* 5  
19 U.S.C. § 552(a)(6)(A).

20 14. The FOIA requires U.S. government agencies to "promptly" make public records  
21 available to any person if that person makes a request which (1) reasonably describes the records  
22 sought and (2) complies with any applicable agency rules for making such a request. *See* 5  
23 U.S.C. § 552(a)(3)(A).

24 15. The FOIA obligates an agency responding to a FOIA request to issue a final  
25 determination on FOIA requests within 20 working days of receipt. *See* 5 U.S.C. §  
26 552(a)(6)(A)(i); 43 C.F.R. 2.16.

16. In issuing a final determination, an agency is required to inform the requester of

1 three things: (1) the agency's determination of whether it must comply with the request; (2) the  
2 reasons for its decision; and (3) notice of the right of the requester to appeal to the head of the  
3 agency. *See* 5 U.S.C. § 552(a)(6)(A)(i).

4 17. The FOIA allows an agency to extend the twenty-day determination deadline by  
5 ten working days when "unusual circumstances" exist and when the agency so notifies a  
6 requester in writing. 5 U.S.C. § 552(a)(6)(B)(i)-(iii); 43 C.F.R. 2.19. A notice informing a  
7 requester of the invocation of the "unusual circumstances" provision must specify the applicable  
8 "unusual circumstances." *Id.*

9 18. Permissible "unusual circumstances" are limited to: "(I) the need to search for and  
10 collect the requested records from field facilities or other establishments that are separate from  
11 the office processing the request; (II) the need to search for, collect, and appropriately examine a  
12 voluminous amount of separate and distinct records which are demanded in a single request; or  
13 (III) the need for consultation, which shall be conducted with all practicable speed, with another  
14 agency having a substantial interest in the determination of the request or among two or more  
15 components of the agency having substantial subject-matter interest therein." 5 U.S.C. §  
16 552(a)(6)(B)(iii).

17 19. Even when an unusual circumstances extension is made, the agency must still  
18 notify the requester of its expected date on which a final determination will be dispatched. *See* 5  
19 U.S.C. § 552(a)(6)(B)(i); 43 C.F.R. 2.19.

20 20. Agencies shall make reasonable efforts to maintain their records so they are  
21 reproducible for FOIA purposes, and "shall make reasonable efforts to search" for responsive  
22 records. 5 U.S.C. § 552(a)(3)(B), (C); *see also* 43 C.F.R. 2.12. The term "search" "means to  
23 review, manually or by automated means, agency records for the purpose of locating those  
24 records which are responsive to a request. *See* 5 U.S.C. § 552(a)(3)(D); 43 C.F.R. 2.70.

25 21. Requesters under the FOIA may ask that an agency waive fees associated with  
26 any request for records "if disclosure of the information is in the public interest because it is  
likely to contribute significantly to the public understanding of the operations or activities of the

1 government and is not primarily in the commercial interest of the requester.” 5 U.S.C. §  
2 552(a)(4)(A)(iii); *see also* 43 C.F.R. 2.38-2.39.

3 22. Agencies are prohibited from assessing search fees if the agency fails to comply  
4 with the FOIA’s twenty-day determination deadline or any lawful extension under the statute’s  
5 unusual circumstances provisions. *See* 5 U.S.C. § 552(a)(4)(A)(viii).

6 23. The FOIA provides that any person who has not been provided records requested  
7 pursuant to the FOIA, after exhausting their administrative remedies, may seek legal redress in  
8 District Court to enjoin the agency from withholding agency records and to order the production  
9 of responsive agency records; it also provides this Court jurisdiction to review whether an  
10 agency has lawfully acted upon a fee waiver request. *See* 5 U.S.C. § 552(a)(4)(B).

11 24. Under the FOIA, federal agencies have the burden to sustain agency action. *See* 5  
12 U.S.C. § 552(a)(4)(B).

13 25. Pursuant to the FOIA, this Court may assess attorney fees and litigation costs  
14 against the United States if the Plaintiff prevails in this action. *See* 5 U.S.C. § 552(a)(4)(E).

#### 14 STATEMENT OF OPERATIVE FACTS

15 26. On September 28, 2019, Laura Leigh, the founder and president of WILD  
16 HORSE EDUCATION, submitted a FOIA request (“WHE FOIA Request”) to BLM on behalf of  
17 Plaintiff WILD HORSE EDUCATION. A copy of this request is attached hereto as **Exhibit A**.

18 27. The WHE FOIA Request contained a fee waiver request pursuant to 5 U.S.C. §  
19 552(a)(4)(A)(iii) and 43 C.F.R. Part 2, Appendix D.

20 28. The WHE FOIA Request sought records associated with the evaluation, training,  
21 proposed changes to, and effectiveness of BLM’s Comprehensive Animal Welfare Policy  
22 (CAWP) from “November 2015 to the present.” BLM developed CAWP as “a proactive program  
23 for protecting the welfare of wild horses and burros under the agency’s management and  
24 protection.” In 2015, BLM prepared CAWP Standards for Wild Horse and Burro Gatherers; in  
25 2016, BLM prepared CAWP Standards for Off-Range Corral Facilities, Transportation, and  
26 Adoption/Sale Events.

1           29.     The records requested by Plaintiff are likely to contribute significantly to the  
2 public understanding of the operations and activities of the government, especially as they  
3 pertain to evaluation of CAWP's effectiveness in protecting the welfare of wild horses and  
4 burros.

5           30.     WILD HORSE EDUCATION has a demonstrated track record of obtaining and  
6 disseminating information obtained under the FOIA concerning the welfare of wild horses and  
7 burros. Since 2011, WILD HORSE EDUCATION has submitted dozens of FOIA requests to  
8 BLM, and it regularly reports on BLM's management and handling of wild horses and burros.  
9 This information is disseminated to WILD HORSE EDUCATION's members and followers, as  
10 well as to the public, through the organization's website and outreach efforts.

11           31.     Plaintiff has no commercial interest or value in records responsive to the WHE  
12 FOIA Request.

13           32.     On October 7, 2019, BLM informed WILD HORSE EDUCATION that the WHE  
14 FOIA Request fell into the "Exceptional/Voluminous" track, explaining that this track is for  
15 requests requiring more than sixty workdays for processing. BLM also stated that it was  
16 "processing" the fee waiver request, but in the interim, the agency was classifying WILD  
HORSE EDUCATION as an "other" requester.

17           33.     On various occasions in 2020 and 2021, Laura Leigh spoke to BLM staff,  
18 explaining that BLM had previously stated (beginning in 2015) that the agency would conduct  
19 annual reviews of CAWP; however, no such reviews had been made available to the public.  
20 Through the WHE FOIA Request, the organization was seeking records that, in part, address  
21 whether such reviews (or similar evaluations) have been conducted.

22           34.     On March 9, 2020, WILD HORSE EDUCATION wrote BLM to ask for an  
23 update on the WHE FOIA Request and an expected date for response.

24           35.     On March 9, 2020, BLM replied that the agency was experiencing a backlog of  
25 FOIA requests; "[e]ven though we normally process requests on a first-in, first-out basis,  
26 because of the nature of your request and the circumstances surrounding this request, we will

1 process your request as the records become available and send them in interim releases.” No date  
2 was provided regarding when interim releases would begin. BLM provided no information on its  
3 consideration of WILD HORSE EDUCATION’s fee waiver request.

4 36. On March 27, 2021, WILD HORSE EDUCATION e-mailed BLM, asking that  
5 the agency respond to the WHE FOIA Request. BLM did not reply to this e-mail.

6 37. On December 4, 2023, BLM wrote WILD HORSE EDUCATION to again state  
7 that the agency was experiencing a backlog of FOIA requests. “Given the passage of time,”  
8 BLM sought confirmation that WILD HORSE EDUCATION was “still interested” in having the  
9 WHE FOIA Request processed. WILD HORSE EDUCATION responded that it still wanted  
10 BLM to respond to its request.

11 38. On February 10, 2025, BLM wrote WILD HORSE EDUCATION to yet again  
12 state that the agency was experiencing a backlog of FOIA requests. “Given the passage of time,”  
13 BLM sought confirmation that WILD HORSE EDUCATION was “still interested” in having the  
14 WHE FOIA Request processed. WILD HORSE EDUCATION responded that it still wanted  
15 BLM to respond to its request.

16 39. To date, WILD HORSE EDUCATION has not received any further  
17 communication from BLM about the WHE FOIA Request.

18 40. To date, BLM has not provided any records to WILD HORSE EDUCATION in  
19 response to the WHE FOIA Request.

20 41. To date, BLM has not identified any date by which it intends to respond to the  
21 WHE FOIA Request.

22 42. To date, BLM has not provided WILD HORSE EDUCATION with a timely and  
23 lawful “determination” that informs WILD HORSE EDUCATION of (1) BLM’s determination  
24 as to whether it will comply with the WHE FOIA Request; (2) the reasons for its decision; and  
25 (3) notice of WILD HORSE EDUCATION’s right to appeal to the head of the agency. 5 U.S.C.  
26 § 552(a)(6)(A)(i).

43. BLM has failed to issue a decision on WILD HORSE EDUCATION’s request for

1 a waiver of fees associated with the processing of the WHE FOIA Request.

2 44. BLM has not shown due diligence in responding to the WHE FOIA Request. 5  
3 U.S.C. § 552(a)(6)(C)(i).

4 45. WILD HORSE EDUCATION has been forced to retain the services of counsel  
5 and to expend funds litigating Defendant's unlawful actions and omissions under the FOIA.

#### 6 **EXHAUSTION OF REMEDIES**

7 46. WILD HORSE EDUCATION is deemed to have exhausted its administrative  
8 remedies pursuant to the FOIA. 5 U.S.C. § 552(a)(6)(C)(i).

#### 9 **CLAIM FOR RELIEF**

##### 10 **Violation of the FOIA and Department of Interior FOIA Regulations**

11 47. Plaintiffs hereby incorporate all previous allegations contained in this Petition as  
12 though fully set forth herein.

13 48. WILD HORSE EDUCATION has a statutory right to have BLM process the  
14 WHE FOIA Request in a manner that complies with the FOIA. This right is further addressed by  
15 the Department of Interior's FOIA regulations.

16 49. WILD HORSE EDUCATION's rights in this regard were violated when BLM  
17 failed to promptly provide public, non-exempt records to WILD HORSE EDUCATION in  
18 response to the WHE FOIA Request and failed to promptly provide WILD HORSE  
19 EDUCATION with a determination on its fee waiver request.

20 50. WILD HORSE EDUCATION's rights also were violated by BLM failing to  
21 provide a final determination for the WHE FOIA Request.

22 51. Based on the nature of WILD HORSE EDUCATION's s organizational activities,  
23 WILD HORSE EDUCATION will continue to employ the FOIA's provisions to request  
24 information from BLM in the foreseeable future. These activities will be adversely affected if  
25 BLM is allowed to continue violating the FOIA's requirements and deadlines.

26 52. BLM's violation of WILD HORSE EDUCATION's legal rights has prejudiced  
WILD HORSE EDUCATION's ability to timely obtain public records.



1           53. Unless enjoined and made subject to a declaration of WILD HORSE  
2 EDUCATION's legal rights by this Court, BLM will continue to violate the rights of WILD  
3 HORSE EDUCATION to receive public records under the FOIA.

4                                   **PRAYER FOR RELIEF**

5           THEREFORE, Plaintiff respectfully requests that this Court:

6           A. Order Defendant to immediately disclose the requested records in response to the  
7 WHE FOIA Request unless an exemption is properly claimed and properly applies.

8           B. Declare Defendant's failure to provide WILD HORSE EDUCATION with a final  
9 determination for the WHE FOIA Request as unlawful under the FOIA and Department of  
10 Interior FOIA regulations.

11           C. Declare Defendant's failure to promptly provide WILD HORSE EDUCATION  
12 with all non-exempt records responsive to the WHE FOIA Request as unlawful under the FOIA  
13 and Department of Interior FOIA regulations.

14           D. Declare Defendant's failure to timely approve WILD HORSE EDUCATION's  
15 request for a waiver of all fees associated with the WHE FOIA Request as unlawful under the  
16 FOIA and Department of Interior FOIA regulations and order Defendant to approve WILD  
HORSE EDUCATION's fee waiver request.

17           E. Declare Defendant's failure to provide WILD HORSE EDUCATION with an  
18 estimated date of completion unlawful under the FOIA and Department of Interior FOIA  
19 regulations.

20           F. Award WILD HORSE EDUCATION its reasonable attorneys' fees and costs  
21 pursuant to 5 U.S.C. section 552(a)(4)(E) or 28 U.S.C. section 2412.

22           G. Grant such other and further relief to WILD HORSE EDUCATION as the Court  
23 may deem just and proper.

24           DATED: March 18, 2025

Respectfully Submitted,

25                                   /s/ Brent M. Resh  
26                                   BRENT M. RESH

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/s/ J. Rae Lovko  
JESSICA L. BLOME  
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## **EXHIBIT A**

Laura Leigh 216 Lemmon Dr #316 Reno, NV 89506

FOIA/PA Specialist  
Bureau of Land Management  
Nevada State Office  
1340 Financial Blvd. Reno, NV 89502

Sept 28, 2019

FOIA Coordinator:

Pursuant to the Freedom of Information Act, 5 U.S.C. Sec. 552-et seq., I, as representative of Wild Horse Education (WHE) request that a copy of the following documents, or documents containing the following information, be provided to me:

- Any and all correspondence, meeting notes, telephone records, operation evaluation sheets, pertaining to the the evaluation, training, proposed changes, effectiveness of the Comprehensive Animal Welfare Policy (CAWP) from November 2015 to the present.
- In 2015 the BLM stated they would be evaluating the effectiveness of CAWP and implementing appropriate changes.
- To date no performance evaluation has been made public. No proposed changes have been made public.
- Individuals with this information would include, but not limited to: Alan Shepherd, Ruth Thompson, Gus Warr, Dean Bolstad.

All of the above requested information includes any reports, memos, e- mails/electronic text messages communication on any kind, letters, phone logs and records, meeting minutes, photos, maps, work orders, or any other information related to “CAWP” evaluation from 2015- present day.

I (WHE) request a fee waiver as a nonprofit involved in disseminating critical information to the public on agency decision making protocols, in addition:

WHE meets the factors entitling WHE to a fee waiver under the Freedom of Information Act. See 5 U.S.C. § 552(a)(4)(A)(iii). See also 43 C.F.R. Part 2, Appendix D.

Under the fee waiver provisions as enacted by Congress, a requester qualifies for a fee waiver if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). Through its own FOIA regulations, the Department of Interior has articulated the following four-part test to determine if a requestor meets the statutory requirements for a fee waiver: (1) Do the records concern the operations or activities of the government?; (2) If so, will disclosure likely contribute to public understanding of these operations and activities?; (3) If so, will release of the requested information contribute significantly to public understanding?; and (4) Is disclosure primarily in the requestor’s commercial interest? See 43 C.F.R. Part 2, Appendix D.

WHE meets the four-part test articulated in the Department of the Interior regulations implementing FOIA, and, therefore, BLM must waive the fees associated this FOIA request.

WHE is actively engaged in informing the public of how the process of management (wild horses and their environment), reflected in this request, have been previously determined and determined agency wide. The disclosure of information is vital to public understanding of agency decision making (criteria 1, 2 and 3). WHE is a registered nonprofit .A commercial interest is one that furthers a commercial, trade, or profit interest. WHE has no commercial interest in obtaining this information and requested fee waiver. Rather, WHE is a not-for-profit group that strives to protect the natural resources and wild horses, and to inform the public on BLM management. Nowhere in WHE's mission statement, by-laws, or charter, does the organization state a profit- motive goal.

It is clearly in the public interest that this requested information be released and disseminated.

Electronic Format Request: I request that the information I seek be provided in electronic format and sent to: [Laura@WildHorseEducation.org](mailto:Laura@WildHorseEducation.org)

I look forward to your prompt attention to this matter.

Sincerely,

Laura Leigh

216 Lemmon Dr Reno, NV 89506